WTM/GM /SEBI/ERO/IMD/27/JUNE/2017

SECURITIES AND EXCHANGE BOARD OF INDIA

INTERIM ORDER CUM SHOW CAUSE NOTICE

UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, IN THE MATTER OF –

Sr. No.	Noticees	PAN	DIN/CIN
	Company		
1.	MERLIN AGRI PROJECTS INDIA LTD.	AAHCM3265H	U01403WB2011PLC163518
	Directors		
2.	PINKU MAJHI	AWHPM3088K	6630315
3.	TAPAS MANDAL	AWDPM4024F	6514807
4.	MADHU SUDAN SINHA	BCXPS8099F	6514806
5.	PALLAB DAS	NA	3559039
6.	SUBRATA PAL	AJCPP2532K	3559038
7.	AMIYA KOLEY	ARXPK1255B	5162288
8.	DIPTIMAN SARKAR	BIIPS6691A	3559034
9.	RAJ KUMAR GHOSH	AKPPG3596C	3528858
10.	MIR AMIRUL ALI	AMJPM6984G	3528860
11.	SARAT BANDAPADHYA	AJTPB4533F	3302622
12.	APARES MISRA	AQNPM2329K	6514794
13.	BARINDRA NATH KOLEY	AJEPK9164G	6514800
14.	BABLU KUMAR ROUTH	AKUPR1928A	6514796
15.	ARGHA PAN	ANZPP9326Q	6514795
16.	AMARNATH SADHUKHAN	AXKPS8554J	6630313
17.	AMIT KUMAR PAL	AUEPP4783H	6630314
	Promoter		
18.	TOUHID ALAM	AGMPA8959J	

The aforesaid entities are hereinafter referred to by their respective names or collectively as "the Noticees".

1. Securities and Exchange Board of India ("SEBI") was in receipt of complaints in relation to money mobilization by way of issue of shares by Merlin Agri Projects India Limited ("MAPIL"). Copies of certificates of redeemable preference shares (RPS) allegedly issued by MAPIL were also received by SEBI.

2. Based on the complaints received, SEBI sought information pertaining to the collection of money by MAPIL. Details of the correspondence and replies are as under:
   (i) SEBI issued letters dated December 30, 2015 to MAPIL and its directors namely, Madhu Sudan Sinha, Tapas Mandal and Pinku Majhi requesting them to furnish the information regarding mobilization of funds from public.
   (ii) Letter sent to the company was returned undelivered with remark "Left without address".
   (iii) All the directors in their letters dated January 11, 2016 requested to grant eight weeks' time to submit the information sought for.
   (iv) Reminders dated March 09 2016 were sent to the company's registered address and its three directors. The letter sent to the company returned undelivered with remark "Left without address". The above named three directors in their letter dated March 21 2016) submitted the following:
      a. Copy of audited annual accounts and annual returns of the company for 2011-12, 2012-13 and 2013-14.
      b. Name, address occupation of all the directors and key managerial personnel of the company
      c. Name and PAN of the company
      d. Copies of Form 2 filled with the ROC
      e. Details of allottee
   (v) A site visit was conducted on March 26, 2016 at the registered office address of MAPIL. However, the company could not be located at the said address.
   (vi) Another reminder dated June 13, 2016 was sent to the company and its directors requesting them to furnish the information regarding fund mobilization during 2012-13. The letter sent to the company was returned undelivered with remark "Left without address". The directors in their letter dated July 08, 2016 submitted that they are helpless and unable to furnish the information/documents regarding fund raising during 2012-13.
   (vii) In addition, a letter dated June 13, 2016 was sent to the auditor of the company, which was delivered. However, no reply was received from the auditor.

3. Details pertaining to MAPIL were procured from the MCA21 portal and they are as under :

   i) Date of Incorporation : 08/06/2011
   ii) Type of the company : Public and Unlisted
   iii) CIN : U01403WB2011PLC163518
   iv) PAN : AAHCM3265H
   v) Registered Office Address : AT- M.V. Apartment, 36, G. T. Road, Parbihata, Sripally, P.S.- Burdwan, WB 713103
   vi) Correspondence Address: same as above.

4. As per the Form 2 submitted by the company, the details of Preference shares allotted during 2011-12 are as under:

Year	Date of Allotment	Type of Security	No. of persons to whom issued	Total Amount (Rs.)
2011-12	06.09.2011	Redeemable Preference Share of Rs. 10	14	10,20,000
	15.11.2011		22	16,01,000
	15.12.2011		6	5,50,000
	31.03.2012		10	14,30,000
Total			**52**	**46,01,000**

5. Further, SEBI received investor complaints where the investors have submitted copies of money receipts and postdated cheque (PDC) issued by the company. The complainant furnished copies of RPS certificates issued by the company. The details of the certificates are given below:

Year	Type	No of Allottee*	Amount (Rs.)
2012-13	Redeemable Preference Share of Rs. 10/- each	4	4,77,000

6. It is further realized that the names of the allottees as per Form 2 (MCA 21) are different from the names in the complaints received by SEBI. Thus, it appears that in addition to the allottees disclosed in Form 2, the company has also made allotments to the complainants. Accordingly, the total number of allottees is given below:

Year	Type	No of Allottee	Amount (Rs.)
2011-12		56	46,01,000

2012-13	Redeemable Preference Share of Rs. 10/- each	4*	4,77,000
Total			**50,78,000**

7. From the above table, it is seen that MAPIL has issued RPS to more than 49 persons in F.Y. 2011-12. Hence, MAPIL appears to have made a public issue of RPS. Till date, no information has been received from MAPIL or its Directors regarding mobilization of funds in F.Y. 2012-13. From the contents of brochure/application form issued by the company purportedly for private placement of securities, it is seen that the offers were made to general public rather than to select individuals. The details of offer / plans are as under:

DIAMOND PLAN

PLAN	A	B	C	D	E
Issue Price Minimum 100 Preference Shares @ Rs. 10/ each	1000/-	1000/-	1000/-	1000/-	1000/-
Redemption Period	3 Years	5 Years	7 Years	10 Years	14 Years
Redemption Amount	500/-	1000/-	2000/-	4000/-	10000/-
Total Redemption Amount	1500/-	2000/-	3000/-	5000/-	11000/-

PLATINUM PLAN

PLAN	A	B	C
Issue Price Minimum 100 Preference Shares @ Rs. 10/ each	20000/-	10000/-	10000/-
Redemption Period	1 Years	3 Years	5 Years
Redemption per Month	135/-	105/-	125/-
Final Redemption Bonus Amount	Nil	500/-	1000/-

ISSUES FOR DETERMINATION

8. In the context of the details of the offer and allotment of preference shares mentioned in the Table at paragraph 6 above (hereinafter referred to as "*the offer and allotment of preference shares*"), the issue for determination in the instant matter is whether or not such mobilization of funds by MAPIL is

in accordance with the provisions of the Companies Act, 1956 read with the provisions of the SEBI Act, 1992.

RELEVANT PROVISIONS OF LAW AND PRIMA FACIE FINDINGS

9. Section 67 of the Companies Act, 1956 deals with the conditions or circumstances under which an offer of shares/debentures by a company would be construed as one made to the public. Extracts of the relevant provisions of section 67 of the Companies Act, 1956, dealing with offer of shares or debentures to the public, are reproduced as under:

> ***"Construction of reference to offering shares or debentures to the public, etc.***
>
> ***67.*** *(1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.*
>
> *(2) Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.*
>
> *(3) No offer or invitation shall be treated as made to the public by virtue of sub- section (1) or sub- section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-*
>
> *(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or*
>
> *(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation.* ***Provided*** *that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:*
>
> ***Provided further*** *that nothing contained in the first proviso shall apply to non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956)."*

10. For ascertaining whether the *offer and allotment of preference shares* by MAPIL would fall within the scope of Section 67 of the Companies Act, 1956, the number of persons to whom offer was made by the Company is crucial. In terms of the first proviso to section 67(3), an offer of shares or debentures made to fifty persons or more would constitute an offer to the public. In this regard, it is observed from the documents obtained from MCA, that MAPIL has offered and allotted RPS to at least 56 persons amounting of Rs. 46,01,000 during 2011-12 and 4 persons amounting of Rs.

4,77,000/- during 2012-13. Details of the offers made by the company relating to issue of securities remain unavailable due to non-cooperation on the part of the directors of the company. However, on the basis of complaints received, and available information recorded above, the *offer and allotment of preference shares* by MAPIL *prima facie* qualifies to be construed as an offer made to the public in terms of section 67(3) of the Companies Act, 1956.

11. From the above, it will follow that such a public issue makes it imperative for MAPIL to comply with the mandate of Section 73 of the Companies Act. Relevant extract of Section 73 of the Companies Act, 1956 is reproduced as under:

> ***"Allotment of shares and debentures to be dealt in on stock exchange.***
>
> ***73.*** *(1) Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange.*
>
> *(1A) ...*
>
> *(2) Where the permission has not been applied under subsection (1) or such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it,* ***the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate****, not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.*
>
> *....."* (emphasis supplied)

12. As *the* offer *and allotment of preference shares* is, *prima facie,* a public issue in accordance with the provisions of the Companies Act, 1956, the same will attract the requirement for such shares to be dealt on a recognised stock exchange in terms of Section 73 of the Companies Act, 1956, as stated above. I find that MAPIL is *prima facie* in breach of the provisions of Section 73 as well.

13. Further, in connection with a public issue, Section 56 of the Companies Act, 1956 mandates that the prospectus issued by a company shall state the matters specified thereunder and Section 60 of the Companies Act, 1956 mandates registration of such prospectus with the ROC. I find that there is no evidence on record to indicate that MAPIL has complied with the provisions of Sections 56

and 60 of Companies Act, 1956, in respect of the *offer and allotment of Preference Shares*. In view of the same, I find that MAPIL is *prima facie* in breach of the provisions of Sections 56 and 60 of the Companies Act, 1956 in connection with the subject offer and allotment of preference shares.

14. In terms of Section 73(2), the company and every director who is an officer in default is jointly and severally liable for repayment of the money raised in breach of provisions of section 73(1). Further, in terms of Section 62 of the Companies Act, every person who *inter alia* is a director of the company at the time of the issue of the prospectus and every person who is a promoter of the company, are liable to pay compensation to every person who subscribes for any shares or debentures on the faith of the prospectus for any loss or damage he may have sustained by reason of any untrue statement included therein. As per the information available on the MCA Portal, the details of the directors of MAPIL, including the dates of appointment/cessation as directors, are as under:

S.No	Name of the person in full	DIN	PAN	Current Designation	Present Residential Address	Original date of appointment	Date of cessation
1	PINKU MAJHI	6630315	AWHPM3088K	Director	CHOTOBAHARKULI, SADHUPALLI, PINDIRA,, KALNA,, BURDWAN, West Bengal - 712146, INDIA	15/06/2013	-
2	TAPAS MANDAL	6514807	AWDPM4024F	Director	HAT BAHADURGANJ, PATUL,, BALAGARH, HOOGHLY, West Bengal - 712514, INDIA	01/03/2013	-
3	MADHU SUDAN SINHA	6514806	BCXPS8099F	Director	VILL-WEST MANASPUR, P.O.- MANASPUR, BANDEL,, HOOGHLY, West Bengal - 712123, INDIA	01/03/2013	-
4	PALLAB DAS	3559039	NA	Director	VILL + P.O.- NALIKUL, P.S.- HARIPAL, HOOGHLY, West Bengal - 712407, INDIA	08/07/2011	23/05/2012
5	SUBRATA PAL	3559038	AJCPP2532K	Director	PALLA ROAD, MEMARI, BURDWAN, West Bengal - 713151, INDIA	08/07/2011	21/02/2012
6	AMIYA KOLEY	5162288	ARXPK1255B	Director	KUSHODANGA, BAKULIAGRAM, KALNA, BURDWAN, West Bengal - 713409, INDIA	12/12/2011	21/02/2012

7	DIPTIMAN SARKAR	3559034	BIIPS6691A	Director	BEJPARA, P.R.- BELUN DHAMASIN, P.S.- PANDUA, HOOGHLY, West Bengal - 712149, INDIA	08/07/2011	07/03/2013
8	RAJ KUMAR GHOSH	3528858	AKPPG3596C	Director	DASGHARA, DHANIAKHALI, HOOGHLY, West Bengal - 712302, INDIA	08/06/2011	07/03/2013
9	MIR AMIRUL ALI	3528860	AMJPM6984G	Director	BAHADURPUR, JAMALPUR,, BURDWAN, West Bengal - 713408, INDIA	08/06/2011	07/03/2013
10	SARAT BANDAPADHYA	3302622	AJTPB4533F	Director	BHATTACHARYA PARA, DASHGHARA - 2, DHANIAKHALI, West Bengal - 712402, INDIA	08/06/2011	07/03/2013
11	APARES MISRA	6514794	AQNPM2329K	Director	RAMNAGAR, KALNA, BURDWAN, West Bengal - 713409, INDIA	01/03/2013	04/05/2015
12	BARINDRA NATH KOLEY	6514800	AJEPK9164G	Director	GOPINATHPUR, KINKARBATI, HARIPAL, HOOGHLY, West Bengal - 712407, INDIA	01/03/2013	05/12/2013
13	BABLU KUMAR ROUTH	6514796	AKUPR1928A	Director	HAULI PURBA,BHANJIPUR,, TARAKESHWAR, HOOGHLY, West Bengal - 712410, INDIA	01/03/2013	05/12/2013
14	ARGHA PAN	6514795	ANZPP9326Q	Director	PANCHPARA, NARAYANPUR, PATRASAYER, BANKURA, West Bengal - 722206, INDIA	01/03/2013	24/12/2013
15	AMARNATH SADHUKHAN	6630313	AXKPS8554J	Director	BAGNAPARA, KALNA, BURDWAN, West Bengal - 713501, INDIA	15/06/2013	04/05/2015
16	AMIT KUMAR PAL	6630314	AUEPP4783H	Director	BADYAPURA DAKSHINAPARA,, BAIDYAPUR BAIDYAPUR, KALNA,, BURDWAN, West Bengal - 713122, INDIA	15/06/2013	04/05/2015
17	Touhid Alam		AGMPA8959J	Promoter	S/o Nazrul Islam, Vill-Dumkalkuthi Post-Domkal PS Dolkal Dist Murshidabad PIN 742303		

15. From the above table, it is noted that directors and promoter in the table above were the directors / promoters of MAPIL at the time of the issue and allotment of RPS and directors at serial no. 1 to 3 are also presently responsible for the affairs of MAPIL.

DIRECTIONS

16. From the information available with SEBI and details downloaded from MCA portal, it can be reasonably inferred that the money mobilization activity on the part of MAPIL is potentially placing investors at risk. In the light of the facts in the instant matter, I find this to be a fit case to pass interim directions against MAPIL and the above named Directors and promoter. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4) and 11B of the SEBI Act, 1992 hereby issue, with immediate effect, the following directions, which shall remain in force until further orders:-

i. MAPIL and the above named Directors and promoter shall not access the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly, or associate themselves with any listed company or company intending to raise money from the public;

ii. MAPIL and the above named Directors and promoter shall neither dispose of, alienate or encumber any of its/their assets nor divert any funds raised from public through *the offer and allotment of preference shares*;

iii. MAPIL and the above named Directors and promoter shall co-operate with SEBI and shall furnish all information/documents in connection with the *offer and allotment of preference shares* sought vide letters dated June 13, 2016.

17. The preliminary findings contained in paragraphs 10, 12 and 13 of this Order are made on the basis of the complaints received and information obtained from MCA portal. MAPIL and the above named Directors and promoter are hereby called upon to show cause as to why suitable directions/prohibitions under Sections 11, 11(4), and 11B of the SEBI Act should not be issued/imposed, including the following directions, namely:-

i. That the Noticees shall jointly and severally refund the money collected through the *offer and allotment of preference shares*, with an interest of 15% per annum (the interest being calculated from the date when the repayments became due in terms of Section 73(2) of the Companies Act, 1956 till the date of actual payment), supported by a certificate of two independent Chartered Accountants to the satisfaction of SEBI (to be submitted to SEBI within 7 days of completion of the refund); and

ii. That the Noticees shall be restrained / prohibited from accessing the securities market by issue of prospectus / offer document / advertisement and buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, for a period of four years from the date of effecting the refund as directed above.

18. The Noticees, may, within 21 days from the date of receipt of this interim order -cum- show cause notice, file their respective replies. The Noticees are directed to furnish an inventory of their assets in their reply. In the event the Noticees intend to avail an opportunity of personal hearing, they may do so by seeking a confirmation in writing from SEBI for the same within 90 days from the date of receipt of this Order. In the event of the Noticees failing to file replies or requesting for an opportunity of personal hearing within the said 90 days, the preliminary findings at paras 10, 12 and 13 of this Order and directions at para 17 (i) and (ii) above shall become final and absolute against the Noticees automatically, without any further orders. The Noticees shall comply with the directions at para 17(i) above within a period of 90 days from the date of this Order becoming final. Upon the expiry of the period of 90 days from the date of this Order becoming final and if the Noticees fail to comply with the directions at para 17 above, SEBI may initiate appropriate enforcement action under SEBI Act, 1992 including Recovery, Adjudication or Prosecution in addition to making a suitable reference to State Government / Local Police.

19. This Order is without prejudice to any other action that SEBI may initiate under securities laws, as deemed appropriate.

20. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories for information and necessary action. A copy of this Order may also be forwarded to MCA/concerned RoC for their information and necessary action with respect to the directions imposed on company and directors.

DATE: JUNE 23, 2017 **G. MAHALINGAM**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA